



# California Fair Political Practices Commission

August 10, 1989

Honorable Bill Lockyer  
Member of the Senate  
State Capitol  
Sacramento, CA 95814

Re: Your Request for Informal Assistance  
Our File No. I-89-378

Dear Senator Lockyer:

This is in response to your request for advice concerning the proper use of pre-1989 contributions under the Political Reform Act (the "Act").<sup>1/</sup> Since your request does not make reference to a specific act, we treat it as one for informal assistance.<sup>2/</sup>

## QUESTION

May contributions to a candidate prior to January 1, 1989 within the contribution limits of the Act be used on his or her candidacy on or after January 1, 1989?

## CONCLUSION

Contributions to a candidate prior to January 1, 1989 within the contribution limits of the Act may be used on his or her candidacy on or after January 1, 1989.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

### ANALYSIS

On June 7, 1988, California voters approved Proposition 73, which amended the Act. Proposition 73 established limits on contributions to candidates, committees and political parties (Sections 85301, 85302, 85303 and 85305.) Proposition 73 also included Section 85306, which states:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

In December 1988, the Commission adopted permanent Regulations 18536 and 18536.1. Subdivision (b)(2) of Regulation 18536, in effect, permitted in elections during and after 1989 the use of pre-1989 contributions to candidates and committees that were within the Act's contribution limits. Regulation 18536.1 set forth a methodology by which candidates and committees could identify pre-1989 contributions received within the Act's limits (known as "unrestricted funds") and received above the Act's limits (known as "restricted funds").

Subdivision (c) of Regulation 18536.1 recognized that, in making contributions to candidates prior to 1989, some committees may have used funds which they themselves received in excess of the Act's contribution limit of \$2,500 for those committees. Therefore, this subdivision required candidates to determine whether any contributions they received from committees and still held on December 31, 1988 were from contributions of over \$2,500 received by the committees. If they were, then the excess funds were considered to be "restricted" and could not be used by the candidate on his or her candidacy on or after January 1, 1989. Also, if the determination could not be made, all but \$1,000 of the contribution to the candidate was considered to be "restricted" funds.

On February 8, 1989, in California Common Cause v. California Fair Political Practices Commission, Los Angeles County Superior Court, Case No. C709383, the court invalidated subdivision (b)(2) of Regulation 18536 and all of Regulation 18536.1, generally on the grounds that Section 85306 expressly forbids the use of any pre-1989 contributions in candidate elections on or after January 1, 1989. As a consequence, neither committees nor candidates were permitted to use any pre-1989 contributions to support candidates.

On March 24, 1989, a lawsuit was filed in the United States District Court, Eastern District of California, entitled Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission, Case No. 89-0433 LKK-JFM, which, among other things, challenged the validity of Section 85306. A motion for preliminary injunction was heard in the case on May 15, 1989. As a result of this hearing, the court enjoined the Commission from enforcing Section 85306 to the extent that enforcement prevented

candidates and committees from using in and after 1989 pre-1989 contributions made within the contribution limits of the Act. Thus, on the basis of this ruling, candidates and committees were essentially permitted to use pre-1989 contributions in the manner permitted by Regulations 18536(b)(2) and 18536.1.<sup>3/</sup>

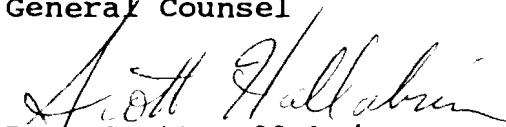
However, because the Superior Court in the Common Cause case (see above) invalidated these regulations and the ruling in the Service Employees case (see above) was not based upon these regulations, they remain inoperative at this time. Consequently, the requirements concerning a candidate's treatment of contributions from committees set forth in subdivision (c) of Regulation 18536.1 no longer applies because the regulation itself is inoperative.

Therefore, since May 15, 1989, candidates have no longer been required to ascertain whether pre-1989 contributions they received from committees were themselves received by the committees in excess of the Act's contribution limits.

I hope that this has been of assistance. If, however, you have further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Scott Hallabrin  
Counsel, Legal Division

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<sup>3/</sup> A motion for summary judgment, which may result in the federal court's final ruling on Section 85306, is scheduled for hearing on August 11, 1989. Please contact us after August 11 for information concerning the validity of Section 85306.

# Bill Lockyer Senator

10th S.D.

State Capitol, Sacramento 95814

June 22, 1989

Kathryn Donovan  
General Counsel  
FPPC  
P.O. Box 807  
Sacramento, CA 95814


Dear Ms. Donovan,

It has come to my attention that the FPPC has recently changed one of its interpretations of Proposition 73. Late last year, the FPPC ruled that when an elected official was in the process of segregating contributions, he/she had to call a PAC, that had contributed more than \$1,000 to the elected official's campaign committee, and ask if they have had a single contribution of more than \$2,500 to their PAC. If the answer was yes, then the elected official's campaign committee could only keep \$1,000 in the "unrestricted account" and the rest had to go into the "office holder account".

It is my understanding that since the recent court decision which allows for all segregated moneys to be used for campaign purposes, the FPPC has nullified the above interpretation, and therefore the agency allows a campaign committee to segregate into the "unrestricted account" every single contribution that is within the Prop. 73 limits.

I would appreciate it if you can provide me with a clarification of the current rule.

Sincerely,

  
BILL LOCKYER  
State Senator

BL:eo



# California Fair Political Practices Commission

June 27, 1989

Honorable Bill Lockyer  
State Senator  
State Capitol  
Sacramento, CA 95814

Re: Letter No. 89-378

Dear Senator Lockyer:

Your letter requesting advice under the Political Reform Act was received on June 26, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh

**Bill Lockyer**  
**Senator**

10th S.D.

State Capitol, Sacramento 95814

June 22, 1989

Kathryn Donovan  
General Counsel  
FPPC  
P.O. Box 807  
Sacramento, CA 95814

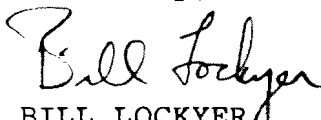
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